

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

December 13 , 1999

ORDER

CMP NATURAL GAS, L.L.C.,
Petition for Approval to Furnish
Gas Service in the Municipalities
Of Westbrook and Gorham (§ 2105)

Docket No. 99-477

CENTRAL MAINE POWER COMPANY
AND CMP NATURAL GAS, L.L.C.,
Request for Approval of Affiliated
Interest Transaction, Sale of Assets
(Property)

Docket No. 99-739

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

TABLE OF CONTENTS

I. SUMMARY	4
II. PROCEDURAL HISTORY	4
III. CONTENTS OF RECORD	10
IV. LEGAL STANDARDS	10
A. <u>Statutory Provisions</u>	10
B. <u>Case Precedent</u>	11
V. BACKGROUND: DESCRIPTION OF PROPOSED AND EXISTING NATURAL GAS SERVICE IN WESTBROOK AND GORHAM	12
VI. ANALYSIS	13
A. <u>Service to the Calpine Corporation Facility in Westbrook</u>	14
1. <u>Positions of the Parties</u>	14
2. <u>Type of Service Not Currently Provided</u>	14
3. <u>Competitive Choice</u>	15

B.	<u>Service to Gorham and Westbrook</u>	16
1.	<u>Gorham</u>	16
2.	<u>Westbrook</u>	17
a.	<u>Natural Monopoly Better Than Competition?</u>	17
b.	<u>Safety</u>	18
c.	<u>Rate Stability for Northern</u>	18
d.	<u>Competitive Policy: Impact on LDC Expansion</u>	19
e.	<u>Service Limitations: New vs. Existing Customers</u>	20
3.	<u>Conclusion</u>	22
C.	<u>Engineering Plans</u>	22
1.	<u>For Service to Calpine</u>	22
2.	<u>For Service to Westbrook and Gorham</u>	22
D.	<u>Just and Reasonable Rates</u>	23
E.	<u>Authority to Serve on Less Than Whole Municipality</u>	23
F.	<u>Affiliated Interest Dealings</u>	24
1.	<u>Preferential Treatment by CMP of CMP NG Over Northern</u>	25
a.	<u>CMP's Treatment of CMP NG and Northern</u>	26
b.	<u>The Assessment Agreement</u>	28
(i)	<u>§ 707 Approval is Necessary</u>	29
c.	<u>Unreasonable Influence Over Calpine</u>	30
G.	<u>Late-Released Information</u>	31
H.	<u>Request for Sanctions for Adelberg Letter</u>	32
I.	<u>Representations of Necessary Timeframes for This Case</u>	33
VII.	REQUEST FOR PRELIMINARY § 707 APPROVAL	34

VIII. CONCLUSION	36
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APPENDIX A:	39
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I. SUMMARY

We authorize CMP Natural Gas (CMP NG) to provide service to the Calpine Corporation facility located in Westbrook and also to serve generally in the municipality of Gorham. We deny CMP NG's request for authority to serve Westbrook at this time but would consider this further if requested. We hold this proceeding open to resolve pending allegations regarding litigation abuses.

We do not find record support to deny CMP NG authority to serve on the basis of alleged inappropriate affiliate dealings. We will complete our review of affiliated interest transactions between CMP NG and Central Maine Power Company (CMP) to determine whether to approve the proposed agreements for transfer and use of CMP's electric corridors by CMP NG for its proposed pipeline to serve the Calpine Corporation facility in Westbrook in Docket No. 99-739.

II. PROCEDURAL HISTORY

On July 8, 1999, CMP Natural Gas, LLC, filed a notice of its intent to file its application for authority to provide natural gas distribution service in the Towns of Westbrook and Gorham and requested that the Commission issue a protective order to cover confidential information to be included in the filing. The Hearing Examiner issued a Temporary Protective Order on July 15, 1999, protecting financial analyses concerning costs, revenues and earnings; engineering studies and plans; market research and customer information; and special contract terms.

On July 16, 1999, CMP NG submitted its application, filed pursuant to 35-A M.R.S.A. §§ 2102 and 2104, including the Prefiled Testimony of Tim D. Kelley, President and CEO and a 4-page cover letter providing a legal analysis supporting its approval. CMP NG requested expedited consideration of its application and a decision by October 1, 1999, to allow it to begin construction prior to the onset of winter.

On August 2, 1999, the Hearing Examiner issued a Notice of Proceeding and Procedural Order with Proposed Schedule that would allow the case to be deliberated on October 4, 1999. The deadline for intervention was August 18, 1999, and an initial case conference was held August 19, 1999.

At the conference, the Hearing Examiner granted the interventions of the Office of the Public Advocate (OPA), Northern Utilities, Inc. (Northern), Maritimes & Northeast Pipeline, LLC (MNE), and granted Bangor Gas Company LLP (Bangor Gas) limited intervention for purposes of submitting a brief.

The Hearing Examiner discussed with the parties the issues that were presented by CMP NG's filing and solicited input on whether they could be adequately addressed on the proposed schedule. Northern objected to the Examiner's proposed schedule on the basis that it would not provide them or the Commission with adequate time to review the issues raised in the case. The Examiner agreed and asked the parties to present a joint proposed schedule to allow resolution of the case in early to mid-December 1999.

On August 19, 1999, CMP NG filed a joint revised procedural schedule with Northern and OPA, but stated that it did so under protest, in order to avoid any delay in resolution of the case that might occur if a schedule were not in place. The Hearing Examiner adopted the proposed schedule on August 19, 1999.

On August 23, 1999, CMP NG petitioned the Commission for rehearing and reconsideration of both the Hearing Examiner's ruling on scope at the initial case conference and on the Examiner's revised schedule extending beyond October 1, 1999. In particular, CMP NG argued that issues involving dealings between affiliates CMP and CMP NG for use of CMP's transmission corridors were not relevant to this case and should be excluded. CMP NG also objected to extending resolution of the case beyond October 1, 1999.

The Commission held a hearing on CMP NG's request for reconsideration on September 7, 1999 to explore the question of what harm would ensue if the procedural schedule were extended beyond October 1, 1999, and held deliberations immediately thereafter.

On September 9, 1999, the Commission issued its Order on Reconsideration of Schedule and Scope requiring the Hearing Examiner to develop a schedule to resolve the proceeding by November 1, 1999 or shortly thereafter, finding this timeframe consistent with CMP NG's construction schedule and adequate to address the issues raised in this proceeding. The Examiner issued a revised schedule on September 10, 1999 and on the same date granted CMP NG's motion to compel Northern to respond to discovery prior to submitting its prefiled testimony. The Examiner requested that CMP NG advise the Commission in the event it no longer required resolution by November 1, 1999 to begin construction (due to slippage in construction schedule).

The revised schedule set a technical conference for October 5, 1999 to allow for discovery on both CMP NG's and Northern's direct testimonies. CMP NG requested that this be changed to accommodate Mr. Kelley who would be in Chicago on that date. Northern objected to CMP NG's request. Because of schedule conflicts and constraints facing each party's witnesses, the Hearing Examiner scheduled three technical conferences: October 1st for questions to Mr. Kelley; October 5, 1999 for questions to Messrs. Cote and DaFonte; and October 6, 1999 for additional questions to Mr. Kelley. The Hearing Examiner entered the transcripts of all technical conferences into the record of this case.

On September 15, 1999, the Hearing Examiner issued Temporary Protective Order No. 2 affording confidential treatment to information provided by Northern in this

proceeding fitting the same categories of information for which CMP NG was afforded protection under the July 15, 1999 Temporary Protective Order.

On September 16, 1999, Northern filed a request pursuant to 35-A M.R.S.A. § 1311-A (1)(D) to have released to its attorneys copies of confidential information

provided by CMP NG in this proceeding. On October 6, 1999, the Hearing Examiner issued a procedural order requesting parties' comments on Northern's request. CMP NG and Northern filed comments in response to the procedural order on October 7, 1999.

Northern filed the prefiled direct testimony of Danny G. Cote and Francisco DaFonte on September 17, 1999. Northern later provided re-redacted testimonies for its witnesses on October 4, 1999 and further revised redactions on October 18, 1999 in response to an October 14, 1999 procedural order directing the parties to revise redactions consistent with the release of now non-confidential material. CMP NG filed its further re-redacted direct testimony of Mr. Kelley at the direction of the Hearing Examiner on October 22, 1999.

By the September 13, 1999 Procedural Order, parties were requested to file comments by September 28, 1999 on service area policy issues. Northern, CMP NG, and OPA filed responsive comments.

The Examiner required the parties to file a preliminary list of Uncontested Facts on September 17, 1999 and a Final List of Uncontested Facts on October 8, 1999. The parties filed a stipulation of facts on October 8, 1999 executed by OPA, Northern, and CMP NG. See Appendix A.

On October 12, 1999, the Hearing Examiner issued an Order Denying Northern Utilities, Inc.'s Request to Release Confidential Information to Counsel Pursuant to 35-A M.R.S.A. § 1311-A (1)(D). (October 12th Order). The Examiner allowed release of certain limited information regarding CMP NG's dealings with CMP for use of the electric transmission corridors.

The Commission held a hearing on October 13, 1999. At the hearing, Northern made an oral appeal to the Commission of the Examiner's October 12, 1999 Order pursuant to § 1311-A (2). The Bench conducted a further hearing on Northern's motion. At the conclusion of the hearing, it appeared that Northern's § 1311-A appeal was largely resolved because Northern was no longer seeking access to certain information that would subject the attorney to limitations on future representation of Northern.¹

¹ For the record of the Commission's October 13, 1999 hearing on and modification of the Examiner's October 12th Order, see Tr. G-207-245.

In response to the Examiner's October 12th Order, CMP NG was directed to provide certain information to Northern. CMP NG provided this information on October 14, 1999. CMP NG also provided copies of its newly executed agreements with CMP for transfer of property rights and use of the electric affiliate's corridors for CMP NG's proposed pipeline to serve the Calpine facility in Westbrook.

On October 18, 1999, Northern filed a Motion to Suspend or Modify Procedural Schedule and its Fourth Set of Data Requests to CMP NG on the newly released information. On that same day, the Hearing Examiner issued a Procedural Order seeking comment on Northern's motion and, in particular, on what hardship would occur if the schedule were extended for two weeks to allow further review of the newly provided information. CMP NG and Northern filed responsive comments on October 19, 1999. CMP NG opposed the extension because in its view further process was not warranted. On October 20, 1999, the OPA requested a 2-day extension of the briefing deadline.

On October 22, 1999, the Hearing Examiner issued a Procedural Order Extending Briefing and Case Schedule to allow further time to explore the newly released information and set the date for resolution of all matters in the case for November 15, 1999, finding this to be generally consistent with CMP NG's construction schedule.

On October 22, 1999, CMP NG and CMP made a joint filing seeking approval of these affiliated transactions pursuant to 35-A M.R.S.A. § 707. The Commission assigned this matter Docket No. 99-739 and issued a Notice of Proceeding on October 28, 1999 to the parties to this docket among others. Petitions to Intervene were due November 8, 1999 and an initial case conference was held November 17, 1999.

On October 26, 1999, the Advisory Staff issued a procedural order outlining a proposed settlement and setting a telephone settlement conference for discussion thereof. The Examiner held a brief unrecorded settlement conference in which Northern, Bangor Gas, and MNE participated by telephone. Northern objected to proceeding with substantive settlement discussions in the presence of the Advisory Staff. Consequently, the Advisory Staff left the conference to allow the parties to discuss potential settlement and very shortly thereafter, the OPA reported to the Hearing Examiner that there was no settlement among the parties.

On October 25, 1999, the Hearing Examiner issued a revised case schedule. Also on that date, CMP NG appealed the Hearing Examiner's October 20 procedural order and extended case schedule to the Commission. The Commission deliberated the matter at a special deliberative session on October 28, 1999 and issued its Order Denying CMP Natural Gas's Request to Overrule Procedural Order on October 29, 1999.

On October 28, 1999, Northern filed a Motion to Compel, seeking to receive redacted versions of communications between CMP NG, E/PRO, and CMP concerning the right-of way and draft right-of-way agreements.

Also on October 28, 1999, Northern and OPA filed letters indicating that they could not prepare adequately for a further hearing (set for November 1, 1999) on newly released information until they received outstanding data responses from CMP NG. The Hearing Examiner held a case management conference by telephone² on October 29, 1999 to discuss the need for further hearing and revisions to the schedule. The Hearing Examiner also discussed with the parties information at issue in Northern's October 28th Motion to Compel.

On October 29, 1999, the Hearing Examiner issued a Procedural Order summarizing the discovery rulings and schedule changes made during the conference.

On November 1, 1999, Northern filed a letter dated October 29th reasserting and further delineating the bases for its October 28th Motion to Compel and, alternatively, seeking an appeal of the Hearing Examiner's October 12, 1999 ruling that CMP NG should not provide this information to Northern's counsel pursuant to § 1311-A (1)(D). On November 1, 1999, CMP NG filed its response to Northern's motion.

CMP NG provided final responses to data requests on newly released information on November 2, 1999. Parties were required to indicate by 3:00 p.m. on November 2, 1999 whether they would request a further hearing on newly released information.

Northern requested a hearing on the newly released information provided by CMP NG.³ Both OPA and MNE indicated that they would participate in a hearing if one were held, but did not request one. The Hearing Examiner denied Northern's request for hearing, but later granted Northern's appeal of this ruling. See *Procedural Order on Further Hearing Request and Northern Utilities' Appeal of Discovery Rulings* (Nov. 2, 1999) and *Order Scheduling Hearing on Late-Released Information* (Nov. 4, 1999).

² The telephone conference was unrecorded.

³ The new information included: 1) information released from confidential designation as a result of orders or other developments and 2) data responses on newly released information. See *Procedural Order - Briefing Issues and Change of Confidential Information Designations* (Oct. 14, 1999), *Procedural Order Extending Briefing and Case Schedule* (Oct. 20, 1999) (requiring CMP NG to respond to Northern's Fourth Data Request), *Procedural Order Requiring Confidential Designation and Re-redaction* (Oct. 20, 1999), *Procedural Order - Discovery Rulings & Telephone Conference* (Oct. 29, 1999), and *Procedural Order on Further Hearing Request and Northern Utilities' Appeal of Discovery Rulings* (Nov. 2, 1999).

A further hearing was held November 5, 1999 to allow parties to cross-examine CMP NG's witnesses on late-released information. Northern, OPA, MNE, and Bangor Gas participated in the hearing. CMP NG provided its witnesses Kelley and Kenny for cross-examination.

On November 2, 1999, the Hearing Examiner issued an Examiner's Report on all issues except developments involving newly released information. The Report recommended that CMP NG be authorized to serve unserved areas of Gorham and Westbrook as well as Calpine. Northern and CMP NG filed exceptions to the Examiner's Report on Monday, November 8, 1999.

Also, on November 2, 1999, Northern filed a Motion to Admit Late Exhibits to include three items that were cited in its initial brief: 1) CMP NG's response to NU-01-17 (Calpine is not an affiliate of CMP Group); Exhibit QK-1 from *Central Maine Power Company, Petition for Approval to Furnish Gas Service In and To Areas Not Currently Receiving Natural Gas*, Docket No. 96-786 (CMP NG Vice President, Darrel Quimby's curriculum vitae); and CMP-02-11 (Northern loses the ability to add capacity to its system in a cost-effective manner if CMP NG is authorized to serve). On November 8, 1999, CMP NG indicated that it did not object to the admission of these items into the record.

As allowed by Procedural Order dated October 29, 1999, Northern, MNE, and OPA filed comments on CMP's and CMP NG's request in related Docket No. 99-739 for expedited treatment of their joint § 707 filing for use of CMP corridors to begin construction on the Calpine project. By Procedural Order dated November 4, 1999, issued in both dockets (99-477 and 99-739), the Hearing Examiner invited CMP to file responsive comments on November 10, 1999.

Northern, MNE, and CMP NG filed Supplemental Briefs on November 10, 1999. The Hearing Examiner issued a Supplemental Examiner's Report on November 12, 1999 offering three alternative resolutions. These were that the Commission 1) not grant CMP NG authority to serve until completion of its review of affiliated dealings issues; 2) grant service authority to CMP NG pursuant to *Mid-Maine* and *Standish* and further consider affiliate interest issues in Docket No. 99-739; or 3) grant authority to CMP NG to serve Calpine but reserve finding on Westbrook and Gorham until resolution of affiliated interest issues.

The Commission heard oral exceptions by CMP NG, Northern, Bangor Gas, MNE, and OPA on November 15, 1999 and deliberated this matter on November 15 and 16, 1999. In addition, the Commission deliberated CMP NG's request for preliminary approval of its affiliate transactions with CMP on November 15, 1999.

III. CONTENTS OF RECORD

The record in this proceeding includes all technical conference and hearing transcripts, pre-filed testimonies, and exhibits proposed by parties for admittance into record, except those disallowed by Examiner (Adelberg letter, Calpine Eastern Corporation letter, City of Westbrook letter) by Evidentiary Ruling dated October 12, 1999.

In our September 9, 1999 Order on Reconsideration of Schedule and Scope, we directed the Hearing Examiner to require the parties to file a list of stipulated facts to facilitate the smooth and efficient processing of this matter. The parties submitted a list of uncontested facts on October 8, 1999. The list is attached hereto as Appendix A.

Further, Northern's Motion to Admit Late Exhibits is granted without objection to allow the responses to NU-01-17 and CMP-02-11 and Exhibit QK-1 from Docket No. 96-786 into the record. All responses to Advisor's data requests are also entered into the record.

IV. LEGAL STANDARDS

A. Statutory Provisions

This proceeding is governed by Chapter 21 of the Maine Revised Statutes Annotated, entitled "Organization, Powers, Service Territory." The applicable provisions are found in 35-A M.R.S.A. §§ 2102, 2104, and 2105. Section 2102(1) states that "no public utility may furnish [natural gas distribution service]...in or to any municipality in or to which another public utility is furnishing or is authorized to furnish a similar service without approval of the commission."

Section 2104 provides that a gas utility requires Commission approval to furnish its service in or to any municipality in the state, even if no other utility is furnishing or is authorized to furnish similar service.

Section 2105(1) sets forth the standard by which the Commission must determine whether to authorize a second utility to provide service in or to a municipality:

no [natural gas distribution] franchise may be granted to any person to operate, manage or control a public utility ... in a municipality where there is in operation a public utility engaged in similar service or authorized to provide similar service, until the commission has made a declaration, after public hearing of all parties interested, that public convenience and necessity require a 2nd public utility.

Thus, we must determine whether the public convenience and necessity require that we authorize CMP NG to serve the Calpine facility and Westbrook and Gorham generally.

Both § 2104 and § 2105 require us to determine that the proposed service will be provided in a safe and adequate manner at rates that are just and reasonable. 35-A M.R.S.A. § 101. See also *Mid-Maine Gas Utilities, Inc.*, Docket No. 96-465, Order (Mar. 7, 1997) at 6-7 (*Mid-Maine*).

B. Case Precedent

The Law Court established in *Standish Telephone Company v. PUC*, 499 A.2d 458 (Oct. 11, 1985) (*Standish*) that a public need for a particular type of service exists when that particular service is not being provided. *Standish* at 462. See also *Mid-Maine* at 8. *Standish* also set out a 3-part test to evaluate whether an application to provide service is in the public interest and should be approved. The test requires a showing 1) of the existence of a public need for the service, 2) that the applicant has the technical ability to provide the service, and 3) that the applicant possesses adequate financial resources to complete the project. *Standish* at 459.

When these criteria are satisfied, we have determined that multiple utilities may be authorized to serve in an unserved area. See *Central Maine Power Company, Petition for Approval to Furnish Gas Service In and To Areas Not Currently Receiving Natural Gas*, Docket No. 96-786, Order (Aug. 17, 1998) (*CMP I*) at 4-7 and *Bangor Gas Company L.L.C.*, Docket No. 97-795, Order Denying Public Advocate's Motion for Comparative Proceeding (June 2, 1998).

In *CMP I*, we determined that competition for gas customers is likely to assist in the expansion of gas to unserved areas and, therefore, serves the public interest. See Aug. 17, 1998 Order at 5. To date, since the introduction of this policy in 1997, we have authorized overlapping, competitive service authority in approximately 35 municipalities. We determined in *Mid-Maine* that absent compelling evidence of harm we would approve competition among LDCs for customers. *Mid-Maine* at 19.

To date, however, our competitive franchise policy has not been tested in circumstances where an incumbent utility is already actively providing service. Thus, this case presents a closer question of whether the public convenience and necessity require a second utility to serve a municipality in which a utility is already serving and, if so, whether any regulatory delineation of service areas within the municipality is warranted.

In *Standish*, the Law Court held that need is established if the service offered by the second utility is being provided by the incumbent but inadequately so. In that case, a second utility applied to provide a lower priced, less convenient, long-distance service in the area in which Standish Telephone Company was serving. The Court noted that comparable service at a lower cost would necessarily be in the public interest. *Standish* at 463. Finally, the Court confirmed that an existing public utility need not be afforded an opportunity to remedy the service deficiencies before a new utility may be authorized to provide the same service. *Standish* at 462, citing *In re LeFebvre*, 343

A.2d 204 (Me. 1975).

The Law Court did find that the Commission is required to consider the impact of authorizing a second utility on the existing utility, and the likelihood that doing so would create a wasteful duplication of facilities. *Standish* at 463-364 (characterizing wasteful duplication of expensive capital facilities as a “major concern” and finding the Commission had proceeded with care “to avoid undue detriment” to the existing utility.) Consequently, we will explore the impact on Northern of allowing CMP NG to serve in the municipalities of Westbrook and Gorham as proposed and whether it would create or invite a wasteful duplication of utility facilities in those areas.

V. BACKGROUND: DESCRIPTION OF PROPOSED AND EXISTING NATURAL GAS SERVICE IN WESTBROOK AND GORHAM

In 1969, the Commission authorized Northern to provide service in or to nearly all cities or towns in the state, including Westbrook and Gorham. See *Northern Utilities, Inc., Re: Petition for Consent to Furnish Natural Gas Service in and to any City or Town of the State of Maine*, U. #2782 (June 27, 1969). Northern has provided service in Westbrook for more than 30 years. Northern currently has approximately 33 miles of distribution mains covering approximately 40% of the roads and streets in Westbrook and serves essentially all of the most densely portions of the municipality. Much of the remainder of the municipality is rural and of low population density.

Northern serves approximately 18 customers just over the municipal boundary in Gorham. The remainder of Gorham is unserved, though Northern has studied the possibility of providing service there over the years. Northern's present distribution system in these municipalities provides service consistent with the current load and pressure requirements.

In *CMP I*, we granted CMP NG -- a joint venture between CMP and New York State Gas and Electric (NYSEG) -- conditional authority to serve in 60 municipalities in Maine and full authority to serve in 35 municipalities grouped into six distinct system areas: Windham/Standish, Augusta, Waterville, Bethel, Bangor, and Bath/Brunswick Coastal areas. In granting conditional authority, we found that CMP NG possessed adequate financial and technical ability to provide service as a natural gas distribution utility in Maine. In granting full authority, we allowed the company to construct and operate a natural gas utility. Westbrook or Gorham were not among the municipalities considered in *CMP I*. We approved general service tariffs for CMP NG in early 1999. CMP NG currently provides service to several customers in the Windham area and is continuing its expansion there.

CMP NG proposes to provide natural gas service under its current tariffs in Westbrook and Gorham. Those tariffs incorporate rate schedules consistent with the rate plan approved in *CMP I*. Those tariffs allow CMP NG to enter into special contracts without prior Commission approval, subject to shareholder risk.⁴

CMP NG's request to serve in Westbrook and Gorham derives from a special contract it has entered into with the Calpine Corporation (Calpine) for construction, operation and maintenance of a high pressure lateral pipeline to serve Calpine's gas-fired power plant located in Westbrook and scheduled to enter commercial operation in early 2001. CMP NG has contracted to provide gas to Calpine during the summer of 2000. The pipeline will traverse Gorham and connect with the Portland Natural Gas Transmission System and Maritimes & Northeast Pipeline joint facilities interstate natural gas transmission pipeline. Consequently, CMP NG requests authority to serve Calpine via a pipeline spur running through parts of Gorham and Westbrook as well as generally in the municipalities of Gorham and Westbrook. CMP NG has not developed specific plans to serve any customer other than Calpine at this time.

VI. ANALYSIS

CMP NG's financial and technical capacity to serve has been stipulated by the parties and has been established by prior Commission orders. See Appendix A: Stipulation of Facts and *CMP I* Aug. 17, 1998 Order. This satisfies two of the three prongs of the *Mid-Maine* test noted above. Thus, we must determine whether there is a need for the service that CMP NG proposes to provide in these municipalities. Because of the distinct types of service CMP NG proposes to provide, as well as the different degrees of service coverage currently being provided by Northern in the municipalities, we will separately analyze CMP NG's proposal to serve Calpine, Gorham, and Westbrook. See *Standish*.

In the *Mid Maine* and *CMP I* cases, we found that we should authorize more than one utility to provide service in municipalities where LDC service was not currently being provided, absent compelling evidence that certificating a second utility would not serve the public interest.⁵ This case raises the further question: Where an existing utility is actively

⁴ In our Order Approving Rate Plan issued December 17, 1998 at 12, we stated:

We will allow CMP Natural Gas to enter special rate contracts without prior Commission review and approval, but we do not guarantee recovery of foregone revenue from ratepayers. This is consistent with our policy of placing start-up business risk on shareholders...

⁵ Northern argues that permitting CMP NG to serve in another LDC's service area would arbitrarily treat gas companies differently than electric companies under the same statutes. However, we considered this and other aspects of this policy in our prior orders. See *CMP I*, Order (Aug. 17, 1998) at 4-7.

providing service in a municipality, how should we take this into account in determining whether to award authority to serve to a second utility? We will address this question in the course of determining the extent to which CMP NG will be allowed to serve in Westbrook and Gorham.

We will first discuss the question of authorizing CMP NG to provide service to Calpine, and then will turn to the issue of serving other customers in the area.

A. Service to the Calpine Corporation Facility in Westbrook

1. Positions of the Parties

CMP NG argues that it should be allowed to serve Calpine because: 1) this is a type of high volume/high pressure service which Northern does not currently provide; 2) Calpine had at least six other options for obtaining service but decided that an agreement with CMP NG best met its needs; and 3) if CMP NG is not authorized to serve Calpine, there is no reason to believe that Calpine would choose Northern rather than one of its other alternatives.

The OPA also urges that we allow CMP NG to serve Calpine, noting that Northern could not use its existing infrastructure to serve the plant but would, instead, have to construct a lateral similar to the one that CMP NG is proposing to construct.

Northern argues that CMP NG should not be allowed to serve Calpine because Northern would be able to negotiate a contract with Calpine under terms which are at least as favorable to Calpine as the terms of their contract with CMP NG and because a single contract is not evidence that the public requires a second utility. Northern also argues that allowing CMP NG to serve a major customer in a municipality in which it is already serving unfairly infringes on existing customers by eliminating the opportunity to spread service costs over greater load.

Bangor Gas also opposes allowing CMP NG to serve Calpine because "in fairness it may be more appropriate to apply a more traditional concept of regulatory certification" in this case since the policy has not been extended to areas in which service is actively being provided.

2. Type of Service Not Currently Provided

The *Standish* decision establishes that a determination of need may be satisfied when there is an existing service provider if the type of service offered

by the second utility is of a different type, price, or quality from that offered by the incumbent.

Clearly, service to the Calpine facility is a type not currently provided in Westbrook, nor is Northern equipped to provide such service with its existing facilities.⁶ Calpine is a new customer that will be taking service for the first time from a new facility. Any service provider would need to construct and operate the same, or substantially the same, facilities as CMP NG proposes to construct to serve Calpine. Allowing CMP NG to provide service to Calpine would not result in a wasteful duplication of facilities because Northern would need to build substantially the same facilities.

As noted above, the Law Court ruled in *Standish* that the Commission need not allow the existing utility an opportunity to provide the proposed service before authorizing a second utility. Moreover, the evidence makes clear that Northern had at least one opportunity to submit a proposal to provide service to Calpine but chose not to do so, its management opting instead to put forth a proposal on behalf of its affiliate, Granite State Gas Transmission, Inc. (Granite).⁷ Mr. DaFonte, representing both Northern and its affiliate, Granite, met with Calpine on April 4, 1999 to discuss the possibility of providing service to Calpine. As a result of that meeting, Mr. DaFonte developed and sent to Calpine a proposal to have Granite, not Northern, build the lateral and associated metering and regulation facilities to provide service to Calpine. Mr. DaFonte stated that he did so largely because Calpine indicated that it was not interested in receiving a proposal from Northern but would consider one from Granite.

The fact that Northern did not submit a proposal (and was not invited to submit one) undercuts the argument that we should deny CMP NG's request for authority to serve Calpine on the basis that Northern is the rightful provider.

3. Competitive Choice

The Examiner's Report noted that Northern seemed to suggest we should, in effect, select the natural gas provider for Calpine. Northern expresses concern that: 1) Calpine did not use a competitive process or issue a Request for Proposals (RFP); 2) failed to provide Northern with project information which it needed to prepare a detailed bid; and 3) ignored certain benefits which Northern or Granite might have been able to provide, such as expanded access to upstream gas supplies. In essence, Northern is arguing that Calpine failed to act in its own best interest and that, if it had, it would have chosen to take service from Northern or Granite and not from CMP NG.

Service to large customers, such as Calpine, could be provided by the following entities: 1) a PUC-regulated LDC, 2) a FERC-regulated interstate pipeline, or

⁶ Nor would we expect Northern to put such facilities in place without a supporting customer commitment.

⁷ Granite is an interstate gas pipeline utility that is regulated by the Federal Energy Regulatory Commission (FERC).

3) the customer itself through facilities it constructs and operates. Calpine is in the best position to determine its energy supplier from this range of choices. Certainly, we do not have the authority over how Calpine makes its energy supply choices (e.g. by RFP or otherwise). If we denied CMP NG authority to serve, there would be no assurance that Calpine would choose Northern over one of its other alternatives.

As the operator of a 540 MW generation facility, Calpine will be buying huge quantities of gas each year, spending several tens of millions of dollars on fuel for its plant. We have every reason to expect that Calpine is vigilant in protecting its interests and presume that it is better equipped than this Commission to assert its own interests in negotiating or contracting for gas supply and delivery. Even if Northern could provide us with evidence that service by Northern was clearly in Calpine's best interest, we could not force Calpine to take service from Northern. Our function is to determine public interest matters involving utilities, not to second guess the business decisions of unregulated business concerns such as Calpine.

In addition, as discussed further below, allowing CMP NG to serve Calpine will not result in a significant harm, and is not unfair, to Northern. This fact is underscored by Northern's own actions. When Mr. DaFonte decided to submit a proposal that Granite, rather than Northern, serve Calpine, he was not required by senior management to consider whether Northern might be harmed as a result. Indeed, Northern's management testified that shareholders would be indifferent as to which affiliate -- Northern or Granite -- would serve Calpine. Its own representatives' decision to forego submitting a proposal to serve Calpine on Northern's behalf suggests that any potential harm to Northern in having another entity serve Calpine is insignificant or was waived.

B. Service to Gorham and Westbrook

1. Gorham

Northern currently serves approximately 1,383 customers in Westbrook and approximately 18 in Gorham. There is no suggestion that Northern's service to these customers is somehow inadequate or that these customers require a second utility or a different type of service. However, there are a significant number of potential customers, particularly in Gorham, who are currently not being served.⁸

In *Mid Maine*, we found that an applicant seeking to serve an area that is currently unserved need make no further evidentiary showing in order to demonstrate that need for the proposed service exists. *Mid Maine* at 10. In *CMP I*, we found that the public interest was best served by allowing more than one LDC to serve municipalities where no LDC was currently providing service or, as in the cases of Falmouth and

⁸While Northern and CMP NG have somewhat different approaches to measuring penetration rates, clearly there are potential customers not currently taking gas service in Westbrook and Gorham, establishing that there is potential for expansions to serve new customers in each of the municipalities.

Cumberland, where only a few customers were being served.

We see no basis to modify our policy, enunciated first in *Mid Maine*, to allow two or more LDC's to compete for customers who do not currently have gas service. There is no compelling basis on this record to modify this position for the municipality of Gorham where service is not currently being provided in most of the town. We therefore grant CMP NG authority to serve all of Gorham.

2. Westbrook

In communities where few or no customers are currently receiving natural gas service, no further demonstration of need is required. For municipalities in which a utility is currently serving to some significant degree, however, we must assess the impact of authorizing a second provider on the incumbent utility, as required by *Standish*, and on the existing customers of the incumbent. We do not believe the record in this proceeding is adequate to make that assessment, and thus, we are not prepared at this time to determine whether the public convenience and necessity require a second utility to serve Westbrook and, if so, what restrictions, if any, we should apply.⁹ We will, however, address various arguments raised in this case.

a. Natural Monopoly Better Than Competition?

Northern argues that local gas delivery service is a natural monopoly, and therefore it is less expensive to have all customers in Westbrook and Gorham served by a single monopoly franchised provider. If Northern's assertion is correct, either for the entire area of the two municipalities or for some portion of that area, then Northern would be in a dominant competitive position whether or not we certify a second utility.

We found in our earlier decisions, however, that we will not assume that a monopoly franchise for gas distribution will provide customers with the best service at the lowest cost. If, in fact, Northern has lower costs by virtue of its existing facilities and incumbency, it should be able to prevail in the marketplace. If a competitor can offer a superior product, Northern's proximity should not be a bar to allowing consumers to benefit from such competition.

We recognize that, for new customers, Northern's existing pricing structure – based on average cost – may put Northern at an artificial competitive disadvantage.¹⁰ This

⁹ We note that CMP NG does not currently have plans to serve any customer in Westbrook other than Calpine and that the priority in this case has been a speedy resolution of the Calpine question.

¹⁰ We recently concluded a comprehensive investigation into Northern's rate design and approved a number of rate design changes to take effect on November 1, 1999. See *Northern Utilities, Inc., Request for Approval of Rate Design and Partial Unbundling Proposal*, Docket No. 97-393, Part One Order Approving Stipulation (Sept. 3, 1999). The new rates reduce the charges for large, high load factor customers. The effect of this new

Commission has, however, consistently permitted utilities to lower prices in particular cases to meet competition. The effect of this policy is to allow competing companies to “win” based on their economic efficiencies. We are also sensitive to the issue that might arise where an “existing” customer (under the tariff rate) might be charged a higher rate than a neighboring “new” customer receiving a “competitive” rate. While we do not consider this issue to be an absolute bar to allowing competition for unserved customers in partially served towns, we have taken this concern into account in our decision to decline to grant, at this time, CMP NG authority to serve customers in Westbrook other than Calpine.

b. Safety

Northern also raises a concern that allowing multiple providers to serve an area could create confusion for customers which might give rise to safety problems. It suggests that gas customers might call the wrong utility to investigate leaks or other problems. CMP NG testified that similar confusion exists even when there is one gas company in an area, noting that the gas company occasionally even receives service calls from residents who do not take gas service.

We recognize that there may be some additional complexity for sorting out which gas company owns the plant or serves the customer in question if the two companies serve areas proximate to one another. However, we do not believe that this presents a significant safety concern or cannot be accommodated by a cooperative arrangement between both providers. For instance, in such a circumstance the first gas company to respond could assist in making the situation safe until the proper entity arrives; arrangements can also be made to compensate the LDC in this circumstance.

c. Rate Stability for Northern

Northern argues that its ability to provide stable rates to its existing customers would be detrimentally affected if growth opportunities within a municipality were limited. For the reasons we have already discussed, we find this argument unpersuasive. Northern only agrees to serve new customers when the profit it will earn from those customers exceeds its hurdle rate (presumably at least equal to its allowed rate of return) over a 35-year horizon. So long as new customers provide at least the allowed rate of return, we see no detrimental effect on rate stability.

d. Competitive Policy: Impact on LDC Expansion

Finally, Northern argues that the policy we adopted in *CMP I* will lead to fewer customers being served within municipalities and, presumably, that we should change our policy. Northern argues that if CMP NG, or some other LDC, can take away its customers within the 35-year time period in which it recovers its investment from customers, it would be less likely to extend its system in the first place. It further states that a rational utility would respond by investing only in a smaller number of highly profitable main extension projects that have high return and quick payback or where customers are

rate design is to reduce any “cherry picking” problem that might have existed.

willing to make a long-term contractual commitment to remain with the utility.

The Examiner's Report concluded that, either as a matter of policy or good business practice, two utilities should not have heavily overlapping service areas. For example, the Report noted that it may not be desirable for one utility to serve the first, third, and fifth houses on a street while the other serves the second, fourth, and sixth houses because of the duplicate service mains required and the fact that reduced customer density may result in higher unit costs paid by both utilities' customers. It could be similarly undesirable to have each utility serving every other street in a development.

One alternative would be for us to attempt today to divide a municipality into two pieces, one to be served by each LDC. We reject this alternative because there is no evidence in the record that would allow us to draw such boundaries and, more importantly, because drawing such boundaries would defeat the purpose of our policy, i.e. to allow competitive forces to expand gas service where it is economic to do so. We expect that LDC's will expand based on their own business judgments as to their costs of expansion, the likely business which expansion might generate, and their willingness to accept the risk that such expansions might be less than fully successful.

CMP NG suggests that rough service area boundaries will tend to be established by market forces. While we generally accept this premise, we cannot rule out the possibility that, in some cases, specific intra-municipality boundaries may turn out to be necessary to avoid destructive competition and/or wasteful duplication of facilities. Consequently, we would consider drawing specific boundaries upon a demonstration that in a specific case, such a boundary would clearly be in the public interest. In the meantime, we generally expect that *de facto* service areas will, in fact, emerge as LDCs move into unserved areas.

The question of delineated service boundaries does arise in Westbrook where Northern currently serves approximately 1,383 customers, principally in the central portion of the municipality. One resolution, suggested by the OPA in its brief, would be to simply exclude CMP NG from serving any customers in Westbrook, other than Calpine. Currently Northern's gas mains cover approximately 40% of the roads in town, and there are significant portions of the town where service is not currently being provided.

OPA's concern appears to be based on the suggestion that Northern's current infrastructure is adequate to provide service to the remainder of the municipality. If that is so, then allowing CMP NG to extend its system to serve unserved areas of Westbrook could result in Northern's facilities being less than fully utilized.

We find Northern's testimony to be equivocal on this point. Mr. Cote testified that Northern expands its system incrementally to match current loads and indicated that the system would not be noticeably underutilized if Northern does not expand throughout the remainder of Westbrook and Gorham. He also testified that Northern's current system would support expansion of service into Gorham, but several upgrades would be necessary depending on what amount of new load developed on the system.

Beyond questions of impact to the existing utility, we see little reason to treat a potential customer in an unserved area of Westbrook any differently than an otherwise identical customer who happens to be just over the line in Gorham. As discussed further below, however, we are unable to fully resolve in this proceeding the question whether competitive restrictions may be necessary and, if so, what they should be.

e. Service Limitations: New vs. Existing Customers

The Examiner's Report recommended that we limit service authority to CMP NG and Northern to expansions only to customers not already taking service from the other LDC, i.e. once a customer initially takes service from an LDC, the customer would not be allowed to become a customer of a different LDC. The Report reasoned that under Northern's own investment criteria, it would be made whole so long as CMP NG did not capture customers who were already taking service from Northern or who could reasonably be expected to take service from new system expansions in the first few years after the investment was made.

In addition, the Report concluded that the benefit of incumbency would reduce, though perhaps not eliminate, the chance that a second firm would move in because if a utility has extended its system to gain a new customer (or group of customers), its incremental costs of continuing to provide service to that

customer are quite low, unlike a potential new provider who would typically need to make a significant investment to take the customer away.

It is unclear on this record the extent to which allowing CMP NG to serve Northern's existing customers could harm Northern. CMP NG has not demonstrated a "need" for a second utility to serve customers now served by Northern. Those customers are already receiving service of the same general type and quality that CMP NG proposes to offer.

Nor is CMP NG seeking to serve Northern's existing customers. In fact, Mr. Kelley, CMP NG's President and CEO, stated:

I really have no interest in serving customers who already have service from another provider. I don't see that as a good business philosophy to see customers switching back and forth between gas companies, electric companies, whatever. So, it would not be my intention to serve or physically bypass any of Northern's existing customers.

Tr. C-48.

Mr. Kelley's views generally confirm that a second utility might not take over service to existing customers of another utility because duplicating facilities and service in an area, particularly under threat of customer attrition, could be unwise investment policy. However, the possibility exists that it would be economic in some circumstances for a second utility to construct facilities to serve certain – perhaps only the most profitable – customers of the incumbent utility.

Nonetheless, we are reluctant to establish today a restriction prohibiting LDCs from serving any customer location that is or has ever been served by another LDC. One possible problem is easily illustrated by an example. Suppose that a business that is taking gas service is sold to a new company that continues doing business at the same location and continues to buy gas. Should the new owner have to do business with the utility that served its predecessor? Should the result be different if the new owner totally changes the nature of the business? Over time, a “no migration” regulatory policy could easily result in difficult interpretation issues as well as in customer frustration, in the event a customer wished to change suppliers and a competing LDC found it economical to expand to the customer.

As CMP NG has no present intention to serve any particular customers in Westbrook, it does not appear imperative that we resolve the issues discussed above now. However, our reluctance to act on the basis of the current record is in no way intended to deter CMP NG or any other LDC from raising these issues in an appropriate case.

3. Conclusion

We grant CMP NG authority to serve in the municipality of Gorham and to serve the Calpine facility located in the municipality of Westbrook. However, we do not authorize CMP NG to serve generally in the municipality of Westbrook, where Northern already has an extensive distribution system, because we are unable at this time to resolve the question whether service area delineation is necessary or desirable to avoid an adverse impact on Northern. We will consider these matters further if CMP NG presents a more specific proposal for providing service in Westbrook or any party otherwise seeks further resolution of this matter.

C. Engineering Plans

1. For Service to Calpine

When authorizing service authority, we review the project engineering plans to assist us in determining whether the utility proposal can reasonably be expected to provide safe and adequate service at just and reasonable rates. Many of the details of CMP NG's proposed service facilities for Calpine are confidential because they would reveal competitively sensitive customer-specific information or utility cost or profit information. This information, therefore, has only been provided to the Commission and its staff and the OPA and its staff.

Our Staff's review of CMP NG's plans for service to Calpine reveals a credible facilities design and construction plan. There has been little or no controversy among Staff, OPA and CMP NG over CMP NG's proposed facilities.¹¹ Accordingly, we find that CMP NG's proposal to provide service to Calpine should result in safe and adequate service.

2. For Service to Westbrook and Gorham

CMP NG has no current engineering plans to serve other customers in Westbrook and Gorham but will develop them as customers request its service. In *CMP I*, we reviewed CMP NG's plans to provide service to the various municipalities in which it sought authority to serve. For some of the municipalities, CMP NG had a general outline of how it proposed to provide service. It represented that it would follow similar procedures and goals in all of the potential service areas. We found that CMP NG's general procedures and degree of capability as presented in that case are adequate to conclude that it will provide safe and adequate service in areas in which it endeavors to serve. Similarly, we extend that conclusion to future efforts to serve Westbrook and Gorham. This is consistent with the parties' stipulation that CMP NG possesses adequate technical capacity to provide natural gas service in Maine.

¹¹ There has been much controversy in this proceeding over whether CMP NG's asserted construction schedule was valid. However, this controversy pertains solely to the issue of the timeframe in which the MPUC proceeding would need to be conducted and does not suggest any project infirmity.

Finally, we note that CMP NG, as well as the other LDCs currently authorized to serve in Maine, will provide periodic reports of system expansion for our review, enabling us to keep apprised of their activities. Moreover, CMP NG and its contractors (along with all authorized LDCs) will be subject to our ongoing pipeline construction, operation and maintenance practices oversight and inspection for general distribution service construction in Gorham and Westbrook, in our role as state agent for the Federal Office of Pipeline Safety.

D. Just and Reasonable Rates

The Staff and parties have explored the project economics of CMP NG's proposal to serve the Calpine facility. Initially, we recognized that if this project was too heavily discounted, it could create a need to increase rates to other customers. If so, it would be necessary to assess CMP NG's actual cost for use of CMP's corridors. Because service to Calpine will be treated solely as a matter between the contracting parties and is subject to shareholders' exclusive risk, we find that concerns about the costs and revenues of CMP NG's proposal are largely not at issue or are sufficiently resolved.

In addition, because the project economics will not affect CMP NG's rates to its general service customers, there is no reason to reopen our previous finding that, under its approved rate schedules, CMP NG will provide service to municipalities in Maine at just and reasonable rates, including in Gorham and Westbrook.¹² Finally, as noted in *CMP I*, the risk of uneconomic LDC expansion is on shareholders.

E. Authority to Serve On Less Than Whole Municipality Basis

Northern argues in this proceeding that the Commission cannot legally authorize a utility to serve portions of a municipality. Rather, Northern asserts, the statutes suggest that we only may authorize service area on a whole municipality basis.

We disagree and have so stated in prior decisions. In particular, *in Contel of Maine, Inc., Proposed Maps to Provide for Boundary Changes Between Contel and Bryant Pond Telephone Company*, Docket No. 90-083 and *Bryant Pond Telephone Company, Proposed Boundary Changes Agreed Upon With Contel of Maine*, Docket No. 90-115 (consolidated), Order Approving Changes in Service Territory Pursuant to 35-A M.R.S.A. §§ 2102, 2105 and 1321 (Oct. 3, 1990), we explicitly found that the Commission could authorize service territory on less than a whole municipality basis. See Order at 2 and 8-9 (finding that the statutory language does not imply that authority to serve may only be granted for a whole municipality.) Moreover, section 2110 states that the Commission may authorize a public utility to "furnish service in, to or through a city or town notwithstanding any territorial limitations, express or implied, in the private and special act of the legislature by which it was organized or under which it was enfranchised." 35-A M.R.S.A. § 2110(1).

¹² Our approval of CMP NG's rate plan was based on the determination that shareholders, not ratepayers, will be at risk for uneconomic expansion.

F. Affiliated Interest Dealings

Early in this proceeding Northern raised the issue of whether there have been any inappropriate dealings between CMP NG and its affiliate, CMP, for use of CMP's electric transmission corridors (right-of-way or ROW). In its initial brief, Northern asserted that CMP NG was more confident than Northern about its ability to gain access to CMP's right-of-way and about the price it would need to pay to gain that access. Northern also suggested that Calpine may have decided to contract with CMP NG because Calpine believed, for whatever reason, that CMP NG would be in a better position to obtain CMP's agreement to use the right-of-way. In its supplemental brief, Northern argued that the undisclosed existence of the Assessment Agreement¹³ between CMP and CMP NG supported its claim that CMP NG acquired the right-of-way unfairly.

MNE similarly argues that a gas LDC should not enjoy preferential terms or conditions or competitively advantageous access to an electric utility affiliate's rights of way and asserts that CMP NG was able to reach an agreement with CMP more quickly and easily than non-affiliates such as MNE or PNGTS. In addition, both Northern and MNE argue that because the contract between CMP and CMP NG was not signed until October 12, 1999, the parties were at a disadvantage in being able to fully pursue this issue in this proceeding.

Affiliated transactions such as allowing use of an existing CMP right-of-way are very important to this Commission for several reasons. First, if the price for the ROW is too low, CMP's ratepayers may be subsidizing CMP NG customers through their electric rates. Second, if non-affiliates are excluded from access to and use of existing electric utility corridors, development of a competitive market for gas (or other services which might require use of the ROW) will be inhibited, which is clearly not in the public interest. Finally, as it becomes more difficult to site new transmission (whether for electricity, natural gas, or telecommunications), there is a public interest in

¹³ The Assessment Agreement, initially executed on October 1998, provided for CMP NG to enter particular electric utility corridors, to work with CMP personnel, and to exchange information with CMP to assist CMP NG in assessing the potential for use of the ROW by CMP NG for natural gas pipeline facilities. The Assessment Agreement provides for CMP to charge CMP NG for rendering such services; Mr. Kelley testified that CMP did so on a monthly basis.

ensuring that the existing corridors are used wisely. In other words, we agree with MNE that affiliates should not have preferential access.

1. Preferential treatment by CMP of CMP NG over Northern

In its Supplemental Brief, Northern requests that we deny CMP NG's request for authority to serve in Westbrook and Gorham "due to the absence of need given that the Calpine agreement was obtained unfairly." Alternatively, Northern requests that we condition CMP NG's authority to serve on approval of the affiliated agreements in Docket No. 99-739.¹⁴

Northern maintains that CMP NG enjoyed a competitive advantage in gaining access to CMP's corridors which enabled it to successfully obtain a contract to serve Calpine. Similarly, Northern argues that it was unfairly disadvantaged by CMP NG's and CMP's affiliated dealings in negotiations to serve Calpine.¹⁵ MNE does not allege that it encountered any particular competitive disadvantage in this instance but is participating in this proceeding in the interest of ensuring that there will be fair and open access to CMP corridors by non-affiliated entities.¹⁶

Northern's position that CMP NG received preferential treatment from CMP is based on the following assertions: (a) Northern was treated differently than CMP NG when it inquired of CMP in March 1999 about gaining access to the CMP right-of-way needed to serve Calpine; (b) CMP and CMP NG concealed their competitively advantageous Assessment Agreement from competitors by not filing for Commission approval under § 707 as required by law, thereby illicitly creating an unlevel playing field; and (c) Calpine's decision to contract with CMP NG demonstrates that Calpine must have been greatly influenced by CMP Group affiliated dealings given the evidence Northern presented concerning the greater benefits which Northern (or Granite) could have provided to Calpine.

It is not possible to fully address these issues in the context of the current proceeding. On October 22, 1999, CMP and CMP NG filed their right-of-way agreements for approval; the Commission assigned this filing Docket No. 99-739. As a practical matter, the development of affiliated dealings issues in this case was limited by the fact that a central player, CMP, was not a party to this case in Docket No. 99-477 and, therefore, did not participate.¹⁷ Nevertheless, we review the evidence presented here to

¹⁴ As a practical matter, CMP NG will not be able to serve Calpine under its current proposal without approval of its affiliated agreements with CMP.

¹⁵ In Northern's view, this competitive disadvantage extended also to its affiliate, Granite, another competitor to provide service to Calpine.

¹⁶ Maritimes negotiated rights to use CMP's electric corridors to allow it to construct its interstate gas pipeline across portions of Maine during 1998.

¹⁷ It would have served CMP NG's interest in an expeditious review to have filed its

determine whether there were any clear improprieties that were so egregious as to cause us to deny CMP NG's petition to serve Calpine, Westbrook, or Gorham.

a. CMP's Treatment of CMP NG and Northern

On March 22, 1999, Mr. Cote, Northern's Vice President, contacted Mr. Grover of CMP to inquire about the right-of-way.¹⁸ Specifically, Mr. Cote testified:

The request was that I asked under what circumstances, if any, CMP allows for the use of right-of-way for parallel utility construction, and if the answer to that was, yes, it does, what were the technical parameters around that; what were the metrics to it, including, if he knew, you know, what the cost was, what the technical standards were, what the separation was from the pole line in terms of where you could locate the pipe, a whole variety of technical information is needed to do a viable estimate to use the right-of-way.

Tr. G-166. Mr. Cote further testified:

The response I got was, we need to -- you need to identify what right-of-way, approximately where you'd like to lie in the right-of-way, what offset from poles. There was a variety of specific technical information. It didn't -- and my understanding as a result of that call was that we do a whole series of kind of technical analysis, and then after review, CMP would determine whether or not Northern could use the right-of-way. Since we were on a very tight timeframe, I believe I testified earlier in one of the technical sessions that that discussion occurred in late March. There simply wasn't that time for us to develop that information between then and even to make a response, and so there was no further discussion.

Tr. G-167-168.

In other words, Northern made one telephone inquiry to CMP requesting fairly detailed information concerning price, set back requirements and other technical information. This action alone is insufficient to establish that Northern was dealt with unfairly by CMP. Given the technical and detailed nature of the request, it would not seem unreasonable, on its face, for CMP to respond that it would like a written request, if only to avoid misunderstandings on such a detailed inquiry.

agreements with CMP along with its petition for service authority and to have provided a CMP witness and ready disclosure of this information in Docket No. 99-477.

¹⁸ Mr. Grover knew Mr. Cote because they serve on the Dig-Safe System Board of Directors. Tr. G-165.

On the other hand, there may have been a difference in how readily CMP agreed to meet with each entity to even discuss the possibility of access to the corridors. While Northern was asked to put a specific request in writing, CMP NG appears to have gained access to CMP personnel to discuss access prior to reducing the terms of its usage or project specifications to writing.¹⁹ Thus, it is unclear whether there was a meaningful difference in CMP's reception to these entities in the initial stages of inquiry and negotiation. If present, such a difference could be attributable to the pre-existence of the Assessment Agreement between CMP and CMP NG, allowing CMP NG to access CMP ROWs to assess their use for pipelines, to the close relationship of the CMP Group affiliates, or even to a concerted effort to put off a non-affiliated competitor on this project. However, without further inquiry into the details of CMP's dealings with both entities, it is not possible to conclude that unfairness existed.

Beyond that, the record reveals little more than that CMP NG appears to have gained some degree of assurance of access or, perhaps, simply gambled on access, as a result of its early meetings with CMP personnel.²⁰

It is unclear whether it was "easier" for CMP NG to reach an agreement with CMP than it might have been for another, non-affiliated party, or if it was, the reasons why. CMP NG's witness and President, Tim Kelley, testified that he employed a more reasonable approach than did MNE and PNGTS in their negotiations with CMP. In particular, Kelley suggested that CMP NG simply decided to agree to, rather than contest, CMP's terms, thereby smoothing negotiations.

Northern's attempt to acquire access to the electric utility corridors began and ended with one preliminary telephone inquiry. Yet Northern argues that it had no realistic option at that point given the shortness of time available in which to prepare and submit a bid to Calpine and, without necessary information on use of CMP's right-of-ways, Northern (and Granite) could not present a competitive bid. Nevertheless, because Northern did not pursue the matter earlier with CMP or, further than the initial telephone inquiry, the record does not allow us to conclude that it was unfairly denied access.

Abuse of affiliate relationships is not easy to demonstrate. On the basis of the record before us, unfairly preferential treatment by CMP of its affiliate is not apparent. Nevertheless the potential for affiliate abuse exists in this circumstance, and the consequences are so significant, that we are obligated to investigate thoroughly. We will do so in Docket No. 99-739 with a more complete array of players.²¹

¹⁹ CMP Gas witness Gary Kenny testified that prints of the plans or profile drawings were exchanged in June 1999, but it is unclear how this compares to the requirements imposed on Northern.

²⁰ Northern argues that the evidence does not support a finding that CMP NG gambled on access or the price of the ROW.

²¹ It seems clear that, in this case at least, all parties would have been better served

b. The Assessment Agreement

The record shows that on or about October 1, 1998, CMP and CMP NG entered into an Assessment Agreement that allowed CMP NG to gain access to certain CMP right-of-ways, but not including the one for service to Calpine, to determine whether they were suitable for CMP NG's purposes. In April of 1999, CMP and CMP NG amended this Agreement to include the Calpine project right-of-way.

Northern argues that the Assessment Agreement and any successive amendments required our approval under 35-A M.R.S.A. § 707. Northern argues that the Agreement is invalid without Commission approval, that CMP NG obtained a competitive advantage over competitors such as Northern through this Agreement, and that CMP NG should not be rewarded with a grant of authority to serve in Westbrook and Gorham by virtue of having obtained a contract with Calpine using this illicit advantage.

Northern further argues that if approval had been sought, Northern would have been aware of the Agreement and would have had grounds to request the same treatment afforded CMP NG under that Agreement.

Finally, Northern complains that the existence of this Agreement did not come to light until very late in this proceeding, specifically on October 14, 1999, and then only when CMP NG was required to provide certain confidential information to Northern that refers to this Agreement. After several more discovery rulings, on October 29th, Northern obtained a redacted version of the Agreement. Northern argues that by not providing this information earlier in this case, CMP NG has behaved unfairly toward the non-confidential parties in this litigation and should be sanctioned pursuant to Maine Rules of Civil Procedure, Rule 37(b)(2).²²

had CMP followed a clear, publicly articulated, and demonstrably non-discriminatory policy with respect to the availability of its rights of way. We, thus, anticipate that we may ultimately establish a specific process that an electric utility would be required to use in dealing with a request for access to its corridors by affiliates similar to those we have established in prior proceedings involving the use of electric utility right-of-ways. See *Central Maine Power Company, Application to Invest Funds in Telecommunications Projects and Approval of Related Affiliated Interests*, Docket No. 96-749, Order Approving Stipulation Part II (Mar. 25, 1997). See also *Central Maine Power Co., Request for Approval of Facilities License Agreement with MaineCom Services*, Docket No. 96-421, Order (Part II) (Oct. 29, 1996); Order on Reconsideration (Feb. 19, 1997) (provides for use by MaineCom of CMP's distribution poles and ducts.)

²²M.R.Civ.P. Rule 37, entitled "Failure to Make Discovery: Sanctions," section (b)(2) states that if a party "fails to obey an order or to provide or permit discovery... the court in which the action is pending may make such orders in regard to the failure as are just" including dismissing the action or rendering a judgment of default against the disobedient party or treating the violation as contempt. The court may also award reasonable expenses. See also Ch. 110, section 825 of the Commission's Rules.

(i) §707 Approval is Required

Section 707(3) states that [n]o public utility may ... make any contract or arrangement for the furnishing of ... any service ... with any affiliated interest until the Commission finds that the contract or arrangement is not adverse to the public interest and gives the contract or arrangement its written approval.

35-A M.R.S.A. § 707(3). The Assessment Agreement clearly falls within the statutory framework. However, subsections 707 (3) (C) and (F) allow the Commission to exempt certain contracts or arrangements by rule or by order under certain parameters.

CMP NG states that the Agreement is not subject to Commission review pursuant to Chapter 820(2)(E) of the Commission's rules defining *de minimis* services. Chapter 820 establishes utility requirements for non-core activities and transactions between affiliates. A *de minimis* service is defined as one for which the utility investment and/or total gross revenue received for providing that service do not exceed 0.1% of the utility's annual gross revenues. Ch. 820 (2)(E). Services that exceed this *de minimis* threshold are subject to treatment as a non-core service under the rule which otherwise may require that the activity be carried out through a separate subsidiary of the utility.

No exemption from § 707 approval is established in section (2)(E), nor do we find any apparent exemption in Ch. 820 that would eliminate the need for Commission approval of the Assessment Agreement. Rather, section 3(D) of the rule appears to state the contrary:

A utility must seek Commission approval for all transactions between the utility and its affiliate or affiliates pursuant to 35-A M.R.S.A. § 707 and section 4 of this rule.

Section 4 establishes the method for valuing utility goods, service and intangibles in transactions between affiliates, but does not offer a basis for exemption from the requirements of § 707.

We conclude that the Assessment Agreement between CMP and CMP NG, executed October 1, 1998, and any subsequent amendments thereto, require Commission approval.

Northern argues that CMP and CMP NG may have decided not to submit the agreement for approval to conceal its existence so that competitors would not become aware of it. The competitive circumstances among natural gas entities in Maine require that we fully investigate any matter that may constitute anti-competitive behavior through avoidance of required regulatory process or other abuse. We will pursue this

matter further in Docket No. 99-739.

We see no justification why either or both utilities did not file the Agreement with us for prior review and approval. Consequently, we direct the Hearing Examiner to issue an order requiring CMP and CMP NG to show cause why we should not subject it to sanctions, forfeiture or punishment for contempt for this omission pursuant to 35-A M.R.S.A. §§ 1502 and 1508.

c. Unreasonable Influence Over Calpine

Northern argues that, given the evidence it presented concerning the benefits which Northern could have provided to Calpine, Calpine's decision to contract with CMP NG demonstrates it must have been greatly influenced by the affiliated dealings.

To accept this argument, we must first accept its premise, that service from Northern would be clearly more beneficial for Calpine but for the alleged inappropriate affiliate dealings.²³ There is no basis in the record which would allow us to conclude that service from either Northern or Granite would clearly be more beneficial than service from CMP NG from Calpine's perspective. In fact, Mr. DaFonte testified on behalf of Northern that there are a number of reasons why Calpine might have opted for service from CMP NG. The fact that Calpine did not chose Northern (or even solicit its bid) is not, in itself, proof that there was discrimination against Northern.

Yet Mr. Cote also expressed his strong "puzzlement" that Calpine never issued an RFP or provided detailed specifications which would allow competitors to prepare offers from which Calpine could select the best priced one. Mr. DaFonte suggests that Calpine inexplicably appeared to pursue a course of limited options, choosing to work closely only with CMP NG rather than with a broader range of competitors.

While we understand how the inference outlined by Northern could be drawn, we have no evidence at all regarding whether Calpine believed, or was led to believe, that CMP NG might have an easier time gaining access to CMP's corridor.²⁴ The argument that CMP NG was able to reach its agreement because Calpine believed that CMP NG was favored over others is, therefore, speculative.²⁵

²³Northern could offer these benefits only through its affiliate, Granite.

²⁴Calpine was not a party to this proceeding and was not called or subpoenaed by any party to be cross-examined; its letter of September 3, 1999 cannot be relied on as evidence. See *Evidentiary Ruling* (Oct. 12, 1999) at 3.

²⁵Northern could have subpoenaed Calpine to determine whether CMP NG might have suggested it would have an inside track to obtaining the CMP right-of-way. Absent such a suggestion, we question whether a belief by Calpine that CMP NG would receive preferential treatment from CMP would have legal significance, assuming there was no

G. Late-Released Information

Northern complains that CMP NG has not released, or has seriously delayed its release of, information that is necessary for a full airing of the issues in this proceeding. Most of the information about which Northern complains relates to the dealings between CMP Group affiliates over the use of CMP transmission corridors. Attachment 1 to its Supplemental Brief lists multiple documents provided after the initial hearing in this proceeding, many of which were requested by Northern two months earlier, during the initial discovery phase of this proceeding. Much of this information was released only after protracted discovery disputes and rulings by the Hearing Examiner.

Both Northern and CMP NG have claimed the need for confidential treatment for certain information provided in this proceeding on the basis that disclosure would reveal sensitive business information which, in the hands of a competitor, would result in harm to the entity. Both Northern and CMP NG have been accorded confidential treatment for such competitively sensitive information by protective orders.

There has been persistent controversy in this proceeding over which information should be redacted or withheld from non-confidential parties and which should not. See *Procedural Order Granting Motion to Compel Discovery Responses*

preferential treatment.

(Sept. 10, 1999); *Order Granting Northern Utilities, Inc.'s Request to Require CMP Natural Gas to Re-redact "Confidential" Filings* (Sept. 21, 1999); *Order Resolving Discovery Disputes* dated (Oct. 1, 1999); *Order Regarding Northern Utilities, Inc.'s Request to Release Confidential Information to Counsel Pursuant to 35-A M.R.S.A. section 1311-A(1)(D)* (Oct. 6, 1999); *Order Denying Northern's Request to Release Confidential Information to Counsel Pursuant to 35-A M.R.S.A. section 1311-A(1)(D)* (Oct. 12, 1999); *Procedural Order Extending Briefing and Case Schedule* (Oct. 20, 1999); *Procedural Order Requiring Confidential Designation and Re-redaction* (Oct. 20, 1999)²⁶; *Procedural Order - Discovery Rulings & Telephone Conference* (Oct. 29, 1999); and *Procedural Order on Further Hearing Request and Northern Utilities's Appeal of Discovery Rulings* (Nov. 2, 1999).

Clearly, a great deal of attention has been given by the Hearing Examiner to address these disputes and concerns. Indeed, this case created more need for mediation of disputes among parties than is normal or desirable. Still, it is unclear whether full information has now been provided, whether information was legitimately delayed or withheld, or whether Northern may have been prejudiced in its effective protection of its interests in the case.

Northern argues that CMP NG's actions have been improper and have prejudiced Northern by impairing its ability to effectively litigate the issues in this proceeding. Whether CMP NG -- or any party -- has conducted itself improperly during the course of litigation before the Commission should be given careful attention to ensure that obstructive and unethical behavior is not permitted. Because of the important public interest issues at stake, we cannot allow the integrity of our process to be undermined by adversarial tactics. While we will hold open Docket No. 99-477 for the purpose of further reviewing allegations of abuse in the course of litigating this case, parties are hereby generally advised to avoid engaging in litigious behavior that may impede the expeditious resolution of matters before us. We will consider imposing sanctions if necessary.

H. Request for Sanctions for Adelberg Letter

On October 18, 1999, Northern requested that sanctions be imposed on CMP NG and CMP Group for their participation in presenting an inappropriate letter to the Commissioners from Arthur Adelberg in his capacity as Executive Vice President of CMP Group, a co-owner of CMP NG and parent corporation of CMP. The letter contained Mr. Adelberg's views on matters at issue in the proceeding, complained about Staff inquiry in the case, and repeated unsubstantiated hearsay allegations of misrepresentations by Northern to potential customers. The Hearing Examiner

²⁶Some of the information initially designated confidential was revealed by each party in open session technical conference or at hearing. The parties were then required to release this information from confidential protection, consistent with the requirements of paragraph 6 of each protective order.

determined that the letter was inappropriate and sufficiently unreliable that it could not be considered credible evidence in this proceeding. See *Evidentiary Ruling* (Oct. 12, 1999) at 1-2. The Examiner denied Northern's request to sanction CMP NG by dismissing its petition for authority to serve Westbrook and Gorham but allowed Northern to request some other sanction and to identify the source of Commission authority to impose it.

Northern urges that the Commission impose the following three sanctions on CMP NG and CMP Group: 1) a 2-day schedule extension to compensate Northern for time spent reviewing the Adelberg letter, preparing cross-examination on it, and preparing responses to it dated October 8 and 12, 1999; 2) that Northern be permitted to write a letter directly to the Commissioners in this case "making factually based legal [arguments];" and 3) that the Commission put CMP NG and CMP Group on notice that any similar actions will be viewed as a violation of a Commission order and be subject to imposition of fines pursuant to 35-A M.R.S.A. §§ 1503 and 1504.

Northern's request for a two-day schedule extension, given the highly compressed schedule in this case, is not unreasonable. However, we find it would not serve the desired purpose at this point in the proceeding.²⁷ Nor could we allow Northern's second request to be allowed to address the Commissioners directly with a similar letter. Such an action is improper in the first instance, or in any instance.

We do, however, grant Northern's final request. CMP NG and CMP Group are hereby notified that direct communications to the Commissioners on matters of substance during a pending case outside of any procedural context are inappropriate and may be subject to penalties provided in 35-A M.R.S.A. §§ 1503 and 1504. This is the case even if the communication is copied to all parties, because it presents untested allegations to the decision-makers outside the procedural framework of the case, leaving parties without an opportunity to cross-examine the proponent or to provide a meaningful response. Moreover, it is unfair to the parties, as well as distracting to the Commission and its staff, to inject unnecessary, unreliable, and inappropriate communications into the proceeding. See generally, *Public Utilities Commission Rulemaking: Chapter 110, Rules of Practice and Procedure; Proposed Amendments to Ex Parte Provisions*, Order Adopting Rule Amendments; Factual and Policy Basis (Feb. 1, 1996); and Docket No. 89-031, Order (Mar. 19, 1990).

I. Representations of Necessary Timeframe for This Case

Northern complains that CMP NG misrepresented to the Commission the necessary timeframe for the completion of this proceeding. Northern points out that CMP NG maintained that its construction was scheduled to begin November 1, 1999 and that Commission approval was necessary by or before that date. Then, on October 14, 1999, CMP NG filed its recently executed agreements for transfer of and use of CMP's corridors for the project. The Closing Agreement stipulates that the transfer of the property rights from CMP to CMP NG would occur up to 30 days after the receipt of all government

²⁷We note that Northern, in effect, already received this additional time given the extended briefing and case schedule already provided in this case.

approvals. Consequently, CMP NG currently has no legal easement or right to use CMP's corridors for construction of a pipeline to serve Calpine, nor will it have such until the Commission grants § 707 approval to the affiliates' agreements for use and transfer of the corridor property rights.

Northern argues, then, that CMP NG has throughout this proceeding misrepresented its timeframe, causing the Commission to conduct an expedited proceeding and unjustifiably subjecting Northern and the other parties to a substantial burden, expense, and disadvantage in this litigation. Northern, MNE and OPA all suggest that CMP NG's effort to start construction this month by having Cianbro contract with CMP for use of its corridors pending § 707 review of CMP NG's proposal to use the CMP corridors for this project was contrived simply to avoid delay that would result from the statutory pre-review requirement of its agreements with CMP.

We are troubled by the contradiction between CMP NG's representations to us and the clear terms of its agreements with CMP by the fact that, when confronted with this hurdle to imminent construction, CMP NG quickly developed an alternative plan involving Cianbro to circumvent the delays that were inherent in the agreement it had recently executed. We find these circumstances troubling because they suggest that either CMP NG was caught unaware of this impending dilemma, in which case it was inexcusably blind to its own affairs, or was disingenuous in its representations to the Commission. Neither construction is attractive.²⁸

We conclude that this contradiction was not an explicit attempt to deceive the Commission because it is not in CMP NG's interest to do so. But for the late-revealed contractual impediment, CMP NG's actions were consistent with an intention to begin construction in November. This situation would not have arisen had CMP and CMP NG submitted their affiliated agreements earlier to allow for necessary review.

VII. REQUEST FOR PRELIMINARY § 707 APPROVAL

In the interest of allowing project construction to take place as planned in order not to delay the Calpine facility's in-service date, CMP NG has requested preliminary approval of its agreements with CMP under § 707. Section 707 requires that affiliates obtain approval for contracts and arrangements; prior to such approval the contracts or arrangements do not have legal effect. On October 22, 1999, CMP and CMP NG filed their proposed agreements for use and transfer of property rights in the CMP corridor for the Calpine project.

In their cover letter, CMP NG indicated that an alternative arrangement between its subcontractor, Cianbro, and CMP was planned so that construction on the project could

²⁸The Commission can punish for contempt or for violation of a duty when a utility representative "willfully evades the answer to a question when he knows the answer." See 35-A M.R.S.A. § 1502 and §1503(D). The Commission may also establish a forfeiture of up to \$1,000 per offense as punishment pursuant to § 1508.

begin pending approval of the CMP/CMP NG affiliated interest agreements. In the event that the Commission believed the alternative arrangement also required §707 approval, CMP NG requested that we grant “preliminary approval” of the CMP/CMP NG ROW agreements pursuant to § 707(3)(F).

On November 9, 1999, Northern, MNE, and the OPA filed comments on CMP NG’s request for “preliminary approval,” arguing that the alternative arrangement between CMP and Cianbro requires § 707 approval and urging the Commission to conduct a full review of the affiliated interest transactions before granting approval. CMP NG also filed comments urging us to grant preliminary approval pursuant to § 707(3)(F).

Section 707(3)(F) states:

... the Commission for good cause may, by rule or order, exempt ...from filing or obtaining commission approval of a contract or arrangement between affiliated interests prior to the entry into the contract or arrangement by the utility, provided that no such exemption may exceed 60 days and that the commission shall thereafter approve or disapprove the contract pursuant to this subsection.

Under this section we may exempt the contracts between CMP and CMP NG for transfer and use of CMP’s electric transmission corridors to allow them to take effect for a period not to exceed 60 days, pending our final approval or disapproval of the contracts.²⁹

We will not grant exemption of these contractual arrangements from prior § 707 approval.³⁰ We find sufficient questions and issues raised in this proceeding to warrant a full, prior review as intended by the overarching statutory framework of § 707(3). Moreover, while there is a substantial public interest in avoiding delay of the Calpine project, it is not apparent that the Calpine project would, in fact, be delayed by our decision. The record contains testimony supporting the feasibility of achieving complete construction in the spring, and our general institutional knowledge of the construction pace of similar pipeline construction also supports this expectation.

We further find that the proposed alternative arrangements between CMP and Cianbro are not materially distinct from the arrangements proposed by CMP and CMP NG in their filed agreements. The alternative arrangements between CMP and Cianbro simply

²⁹ The statutory language does not establish that this would constitute a preliminary approval of the contracts, simply an exemption from prior review and approval pending final approval or disapproval.

³⁰ But see Order (Part I) issued December 3, 1999 where on expedited reconsideration and after holding a telephone conference to gather further information from representatives of Calpine and the Department of Conservation we reversed this ruling, in part, to allow CMP NG to begin construction activities limited to tree clearing and an open-cut crossing of the Stroudwater River.

put a non-affiliate in the place of CMP NG. Because Cianbro would be carrying out CMP NG's project with CMP NG's supervision and backing, it cannot be found to be acting independently of CMP NG. To allow such arrangements to escape regulatory review would threaten to completely undermine the legislative intent for prior commission review established in § 707. The public interest safeguard would be seriously compromised.

Finally, while we make no finding on whether there is another arrangement which the various entities could devise to allow project construction to commence prior to completion of our § 707 review, we caution CMP NG and CMP that if they do so, it will be at their risk in the event it is found to be inconsistent with Maine law.

VIII. CONCLUSION

For the foregoing reasons, we authorize CMP Natural Gas LLC to provide service in the municipality of Gorham and authorize it to serve only the Calpine Corporation facility located in Westbrook at this time. We leave open the question of whether CMP Natural Gas should be authorized to serve other customers in Westbrook until such time as it develops a more specific proposal to do so. Finally, we note that CMP NG undertakes to provide service as authorized herein at its shareholders' risk.

We allowed the parties to develop issues of competitive fairness and affiliated dealings in this case because, if competitive unfairness had occurred, it would be a serious problem that we would need to address in an effort to ensure that a level playing field exists for LDC's in Maine.

There is reason to continue to pursue these issues. If, in fact, Northern received discriminatory treatment from CMP, a problem exists.³¹ CMP's and CMP NG's failure to seek § 707 approval of their Assessment Agreement may have provided CMP NG with a competitive advantage over all competitors. We must decide what regulatory actions are warranted to assure a level playing field among natural gas providers competing within the state. We recognize that CMP is not a party to this case and that it has not had an opportunity to describe the actions it has taken. We will take up these issues further in Docket No. 99-739 incorporate the record developed in Docket No. 99-477 into that docket. Based upon the outcome of our review, we will consider whether it is desirable to open a proceeding to consider the issues surrounding affiliate access to public utility corridors in a broader context.

Whether the public convenience and necessity require a second utility to serve Westbrook and Gorham and whether approval of the affiliated interest agreement between CMP and CMP NG is appropriate are separate questions. For the reasons discussed above, we conclude that need has been shown and that CMP NG should be authorized to serve Gorham and the Calpine facility in Westbrook.

³¹We would expect that when approached by an entity with an interest in using one of its corridors, a prudent utility would seek out other potential users to make certain that this was the "highest and best" use of the real estate.

We will consider the affiliated interest agreement in Docket No. 99-739 to consider whether and to what extent the CMP Group affiliates' actions regarding obtaining or allowing access to the electric utility corridors were adverse to the public interest so that the affiliate agreements should not be approved. While it is premature to reach any determination on those issues now, enough questions have been raised to warrant our noting that nothing in our approval here should be construed to suggest that we will ultimately approve the affiliated interest agreement. As a practical matter, this could mean that CMP NG will need to reformulate, or perhaps abandon, its plans to serve in the two municipalities. Any investments that CMP NG might make in anticipation of a positive finding in Docket No. 99-739 are strictly at CMP NG's own risk.

Moreover, we will not approve the affiliate agreements that provide CMP NG with authority to obtain access and property rights to CMP's corridors until we are satisfied that the dealings between these CMP Group affiliates were appropriate and competition was fair. We also must decide whether sanctions are warranted for anti-competitive actions, if any are found to have occurred.

Finally, we will hold Docket No. 99-477 open to consider whether any conduct by CMP NG (or any other party) in prosecuting this case warrants sanction. We expect that litigants, while legitimately preserving the economic interests of their clients, will present their cases fairly and with professional courtesy. Departures from this standard – whether in the form of frivolous claims interposed to frustrate another party's ability to obtain approvals needed to compete effectively, or in dilatory tactics designed to obscure unfair conduct – will not be tolerated.

Dated at Augusta, Maine, this 13th day of December, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch

Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

APPENDIX A:

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

October 7, 1999

CMP NATURAL GAS, L.L.C.
Petition for Approval to Furnish Gas
Service in the Municipalities of Westbrook
and Gorham

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Docket No. 99-477

Stipulation Agreement

This Stipulation Agreement (the "Stipulation") is entered into and effective as of October 7, 1999, by and between CMP Natural Gas, L.L.C. ("CMP Natural Gas"), Northern Utilities, Inc. ("Northern") and the Maine Office of the Public Advocate ("OPA"). CMP Natural Gas, Northern and OPA are sometimes referred to herein individually as a "Party" or collectively as the "Parties."

A. General Purpose of Stipulation

The purpose of this Stipulation is to identify and describe specific facts or issues that are not contested by the Parties. The Parties agree not to contest any of the specific facts or issues set forth in this Stipulation during the course of this proceeding. However, the Parties recognize that the facts or issues to which they have agreed as of the effective date of the Stipulation are subject to change and that new facts or information may emerge in the future. Accordingly, a Party may, at its sole discretion, withdraw its agreement not to contest a specific fact or issue set forth in the Stipulation after providing written notice to the other Parties. Such notice shall clearly identify the reason that the Party is withdrawing its agreement not to contest a fact or issue identified in the Stipulation, including a statement of any new facts or information which form a basis for the Party's decision.

B. No Precedent

The making of this Stipulation by the Parties shall not constitute precedent as to any matter of law or fact, nor, except as expressly provided otherwise herein, shall it foreclose any of the Parties from making any contention or exercising any right, including rights of appeal, in any other Maine Public Utilities Commission proceeding, or investigation, or any other trial or action.

C. Stipulated Facts and Issues

1. CMP Natural Gas possesses the technical capability and financial resources necessary to provide gas service in Westbrook and Gorham.
2. Northern possesses the technical capability and financial resources necessary to provide gas service in Westbrook and Gorham.
3. CMP Natural Gas has not signed contracts to serve any customers in Westbrook and Gorham other than the Calpine plant.
4. Under CMP Natural Gas's proposal, it is necessary to secure property rights from both Central Maine Power Company and other landowners in order to build a lateral pipeline to serve the Calpine plant.
5. CMP Natural Gas will not charge any customer other than Calpine for the costs of any facilities associated with the lateral pipeline facilities built to serve the Calpine plant.
6. CMP Natural Gas has not entered into any arrangements for financing the costs of building facilities to serve the Calpine plant.
7. Northern reported the following number of meters (active) in Westbrook and Gorham in its annual FERC Form 2-A for reporting years 1995-1998:

<u>12/31/1998</u>	
Westbrook	1,383
Gorham	18
<u>12/31/1997</u>	
Westbrook	1,333
Gorham	17
<u>12/31/1996</u>	
Westbrook	1,310
Gorham	15
<u>12/31/1995</u>	
Westbrook	1,246
Gorham	14
8. According to 1999 data from the City of Westbrook Tax Assessors Office, there are the following number and type of buildings in Westbrook:

321	Commercial and Industrial Businesses
4,161	Single Family/Condos
739	Apartment Buildings (2,163 units)
9. According to 1999 data from the Town of Gorham Tax Assessors Office, there are the following number and type of buildings in Gorham:

186	Commercial Businesses
3,401	Single Family
90	Condos

280 2-Family
26 3 Family
18 4 Family
25 Multi-Family

10. Northern would not use its existing distribution main near the Calpine plant to serve Calpine's electric generation load, but could use those mains to serve Calpine's non-generation load.
11. Interstate pipelines, such as PNGTS and M&N, are permitted to bypass local gas distribution companies and directly serve large gas customers, such as Calpine.

IN WITNESS WHEREOF, the Parties hereto, through their respective attorneys or other representatives who are fully authorized to do so on behalf of their principals, have caused this Stipulation to be executed effective as of the day and year first above written.

CMP Natural Gas, L.L.C.

Dated: _____ By: _____

Northern Utilities, Inc.

Dated: _____ By: _____

Maine Office of the Public Advocate

Dated: _____ By: _____